IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CORPORATE AVIATION CONCEPTS, INC. and CFS AIR LLC,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 03-3020
	:	
MULTI-SERVICE AVIATION CORPORATION,	:	
Defendant and Third-Party Plaintiff,	:	
	:	
v.	:	
	:	
GENERAL ELECTRIC CAPITAL CORPORATION,	:	
Third-Party Defendant.	:	

MEMORANDUM & ORDER

YOHN, J. March ____, 2005

This lawsuit arises out of a series of sales, liens, and lease agreements involving commercial airplanes. Initially, plaintiffs Corporate Aviation Concepts ("CAC") and CFS Air LLC ("CFS") filed suit seeking a declaratory judgment that liens imposed by defendant Multi-Service Aviation Corporation ("MSC") on airplanes owned by plaintiffs were invalid. Next, MSC filed a counterclaim against CAC and CFS, and a third-party complaint against General Electric Capital Corporation ("GEC"). MSC charges that these companies conspired through a series of sales and lease agreements to prevent MSC from enforcing its liens. Presently before the court are CFS and GEC's motions to dismiss MSC's second amended counterclaim and amended third-party complaint for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). For the reasons set forth below, I will grant both motions in part.

I. BACKGROUND[1, 2]

MSC is a credit card processing company that issues corporate aviation credit cards to businesses in the aviation industry. Between 1995 and 2000, MSC issued credit cards to three aviation service providers owned by Northwestern Aircraft Capital Corporation ("NWACC"). (Second Am. Countercl. at ¶ 6, 8, 9.) NWACC issued "Corporate Guarantees" to MSC, guaranteeing prompt payment on these accounts. (*Id*.) NWACC's subsidiaries have failed to pay their credit card bills and owe MSC $247,751.15. (*Id*. at ¶ 18, 19, 20.) NWACC also has failed to satisfy these debts despite its "Corporate Guarantees" to MSC. (*Id*. at ¶ 21.) In response,MSC filed several liens with the Federal Aviation Administration and the State of Kansas on aircraft then owned or leased by NWACC. (*Id*. at 22.)

At approximately the same time that these liens were filed, third-party defendant GEC acquired the aircraft in question from NWACC and leased them to plaintiff CAC, a newly formed corporation.[3] GEC subsequently assigned the leases to plaintiff CFS, a wholly-owned

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[1]The foregoing factual account accepts all allegations in the second amended counterclaim and amended third-party complaint as true. *See Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996).

[2]Because I described the underlying facts in this case in two previous opinions, I will only provide a brief overview of the factual background. *See Corporate Aviation Concepts, Inc. & CFS Air LLC v. Multi-Service Aviation Corp.*, No. 03-3020, 2004 U.S. Dist LEXIS 17154 (E.D. Pa. Aug. 24, 2004) (granting CFS and GEC's motions to dismiss); *Corporate Aviation Concepts, Inc & CFS Air LLC v. Multi-Service Aviation Corp*., No. 03-3020, 2003 U.S. Dist. LEXIS 21108 (E.D. Pa. Nov. 13, 2003) (denying MSC's motion to dismiss or transfer).

[3]Specifically, MSC alleges that on April 1, 2003, GEC leased a Gulf Stream American G-1159A to CAC. (Second Am. Countercl. at ¶ 25.) On April 4, 2003, NWACC sold the Gulf Stream to GEC for "$1.00 and 'OVC,'" and on May 19, 2003, GEC sold the aircraft to CFS and assigned its rights as lessor to CFS as well. (*Id*. at ¶ 26, 31, 32.) Additionally, MSC alleges that prior to November 7, 2002, GEC leased a Gates Learjet 55 to NWACC and on or after that date, GEC assigned the lease to CFS. (*Id*. at ¶ 34, 35.) Finally, MSC contends that CFS owns other

subsidiary of GEC.[4] (*Id*. at ¶ 31, 35.)

MSC contends that GEC, CFS, and NWACC conspired to form CAC to keep the aircraft in operation and prevent MSC from enforcing its liens. (Second Am. Countercl. at ¶ 37, 45.) Specifically, MSC alleges that GEC and CFS purchased equipment, furnishings, trade names, and customer lists from NWACC to assist in CAC's formation, and that CAC, NWACC, CFS, and GEC entered into a "Master Consent Transfer, Assignment and Assumption Agreement and other related contracts." (*Id*. at ¶ 41, 50.) Additionally, MSC asserts that CAC acquired some or all of NWACC's assets for inadequate consideration. (*Id*. at ¶ 74.)

On May 8, 2003, CAC and CFS brought this diversity suit against MSC, seeking a declaratory judgment that the liens on the aircraft formerly owned by NWACC were invalid. Sometime between January and February 2004, the parties resolved this dispute. CAC, CFS, and MSC entered into a "Mutual Release Agreement," whereby MSC agreed to remove the liens on the aircraft.

In the meantime, MSC filed an amended counterclaim against CAC and CFS and a third-party complaint against GEC. MSC brought six counts, including creditor fraud, civil conspiracy, aiding and abetting fraud, joint venture liability, instrumentality liability, and unjust enrichment. *Corporate Aviation*, 2004 U.S. Dist LEXIS 17154, at *8–*9. On April 9, 2004, CFS and GEC filed twin motions to dismiss, and on August 24, this court granted the motions and dismissed the amended counterclaim and third-party complaint. *Id*. at *26.

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aircraft that were previously leased to or owned by NWACC or its subsidiaries, including a Gates Learjet 35A and a Hawker 800. (*Id*. at ¶ 36.)

[4]MSC alleges that GEC "is the manager and 100% owner of CFS." (*Id*. at ¶ 24.)

I dismissed MSC's creditor fraud, aiding and abetting, and unjust enrichment claims with prejudice, but I dismissed the conspiracy, joint venture, and instrumentality claims[5] without prejudice, and provided MSC with leave to amend. *Id*. at *26–*27. With respect to the civil conspiracy claim, I concluded that MSC's initial pleadings failed to allege any particular unlawful purpose or malice, as required by Pennsylvania law. *Id*. at *17. With respect to MSC's joint venture claim, I concluded that MSC's initial allegations could not support a joint venture claim because MSC failed to allege "the existence of terms of an agreement to form a joint venture." *Id*. at *20. Additionally, I observed that joint venture liability can only attach when one of the participants commits a tort, and MSC failed to allege an underlying tort. *Corporate Aviation*, 2004 U.S. Dist LEXIS 17154, at *20. Finally, with respect to the instrumentality claim, I concluded that although MSC's allegations, if true, supported a theory that CAC was an instrumentality of NWACC , MSC failed to allege any facts suggesting that GEC or CFS could be held liable under such a theory. *Id*. at *23–*24. I observed that even if I assumed that CFS was an instrumentality of GEC, GEC could not be held liable under an instrumentality theory because MSC "failed to allege any way in which CFS is liable to it in the first place." *Id*. at *24.

On September 23, 2004, MSC filed its second amended counterclaim and amended third-party complaint and re-alleged civil conspiracy, joint venture liability, and instrumentality liability against CAC,[6] CFS, and GEC. On December 5, 2004, CFS and GEC filed the instant motions to dismiss, which have now been fully briefed.

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[5]I determined that MSC had stated a claim against CAC for instrumentality liability and did not dismiss this lone cause of action. *Corporate Aviation*, 2004 U.S. Dist. LEXIS 17154, at *23. However, I dismissed the remainder of MSC's instrumentality claims.

[6]Apparently, CAC has recently filed for corporate dissolution.

II. STANDARD OF REVIEW

In ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), courts must accept as true all well-pled allegations of fact in the complaint,[7] and any reasonable inferences that may be drawn therefrom, to determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996); *Colburn v. Upper Darby Township*, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted). Although courts must construe the complaint in the light most favorable to the plaintiff, they need not "accept as true unsupported conclusions and unwarranted inferences." *Schuylkill Energy Res. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d 1997).

Courts will grant a motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). "The issue is not whether [the claimant] will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997).

III. DISCUSSION

A. Civil Conspiracy

As I described in my August 24 opinion, under Pennsylvania law,[8] to overcome a motion

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[7]I will apply the following principles to MSC's second amended complaint and amended third-party complaint rather than CAC and CFS's initial complaint.

[8]The parties agree that Pennsylvania law applies here. (*See* Br. in Support of GEC's Mot. to Dismiss at 6; Br. in Support of MSC's Opp. to Mot. to Dismiss at 8.)

to dismiss, a party asserting civil conspiracy must allege: "(1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage." *Strickland v. Univ. of Scranton*, 700 A.2d 979, 987–88 (Pa. Super. Ct. 1997) (citation omitted). "Proof of malice, i.e., an intent to injure, is essential in proof of conspiracy." *Skipworth v. Lead Indus. Ass'n, Inc*., 690 A.2d 169, 174 (1997) (citation omitted).

In my earlier opinion, I observed that MSC failed to allege any particular unlawful purpose and failed to allege malice. *Corporate Aviation*, 2004 U.S. Dist LEXIS 17154, at *20. In its second amended counterclaim and amended third-party complaint, MSC has supplemented its original pleadings with the following allegations. First, MSC alleges that CAC, NWACC, CFS, and GEC "entered into a Master Consent Transfer, Assignment, and Assumption Agreement and other related contracts." (Second Am. Countercl. at ¶ 50.) Next, MSC asserts that at the time of this agreement, CFS and GEC knew about the contractual relationship between NWACC and MSC, and by forming CAC, CFS and GEC interfered with MSC's liens, which secured the debt that arose from the contractual relationship. (*Id*. at ¶ 51, 52.) Further, MSC alleges that CFS and GEC acted "with malice and or/intent to injure [MSC]" and created CAC for the unlawful purpose of avoiding debts owed to MSC. (*Id*. at ¶ 53, 56.)

These allegations satisfy the requirements for civil conspiracy. MSC alleges that CFS and GEC formed CAC for the unlawful purpose of interfering with NWACC's credit agreement with MSC. In Pennsylvania, to set forth a legally sufficient cause of action for intentional interference with contractual relations, a plaintiff must plead the following four elements:

(1) the existence of a contractual . . . relation between the complainant and a third party;

(2) purposeful action on the part of the defendant, specifically intended to harm the existing relation . . . ;
(3) the absence of privilege or justification on the part of the defendant; and
(4) the occasioning of actual legal damage as a result of the defendant's conduct.

Pelagatti v. Cohen, 536 A.2d 1337, 1342 (Pa. Super. Ct. 1987) (citations omitted). Here, MSC alleges a contractual relation, the "Corporate Guarantees," between MSC and a third party, NWACC. Additionally, MSC alleges that CFS and GEC knew about this contractual relationship and intended to harm it by preventing MSC from enforcing its liens. Finally, there is nothing to suggest that CFS or GEC's actions were privileged, and MSC has alleged actual legal damage because NWACC's credit card debt remains unpaid. Hence, MSC has successfully alleged that CFS and GEC acted with a particular unlawful purpose. Further, because MSC contends that CFS and GEC knew about MSC's contractual relationship with NWACC, MSC has sufficiently pled malice or "an intent to injure."

GEC and CFS argue that there can be nothing unlawful about preventing MSC from enforcing its liens because they were "bogus" and "improperly filed." (Br. in Support of GEC's Mot. to Dismiss at 8.)[9] To support this argument, GEC and CFS observe that MSC voluntarily released its liens on the aircrafts. They claim that MSC released the liens "to escape a judicial ruling that could negatively impact the validity of other similar lien claims." (*Id*. at 5.) Although MSC did voluntarily remove the liens, there was no judicial determination as to their validity, and this argument fails because I must accept as true all well-pled allegations of fact in MSC's second amended counterclaim and third-party complaint.[10] *Nami*, 82 F.3d at 65. Hence, for the

[9]CFS's brief "incorporates . . . all factual history and legal arguments expressed in [GEC's brief]." (Br. in Supp. of CFS's Mot. to Dismiss at 1.)

[10]If GEC can eventually prove that the liens were invalid, MSC's claim may well fail. However, I may not consider this issue at this stage in the litigation.

purposes of this motion, I must assume that MSC's liens were valid at the time that CAC, CFS, and GEC allegedly interfered with the liens. Thus, MSC has pled sufficient facts to state a claim for civil conspiracy.

B. Joint Venture Liability

A joint venture is an "association of persons or corporations who by contract, express, or implied, agree to engage in a common enterprise for their mutual profit." *Duquesne Light Co. v. Woodland Hills Sch. Dist.*, 700 A.2d 1038, 1055 (Pa. Commw. Ct. 1997) (citation omitted). Ordinarily, "a joint venturer will be held responsible with his or her associates for the losses sustained by the enterprise." *Snellbaker v. Herrmann*, 462 A.2d 713, 716 (Pa. Super. Ct. 1983). Under Pennsylvania law, to constitute a joint venture:

> (1) each party to the venture must make a contribution, not necessarily of capital but by way of services, skill, knowledge, materials, or money; (2) profits must be shared among the parties; (3) there must be a 'joint proprietary interest and right of mutual control over the subject matter' of the enterprise; (4) usually, there is a single business transaction rather than a general and continuous transaction.

Id. (quoting *McRoberts v. Phelps*, 138 A.2d 439, 443–43 (Pa. 1958)).

MSC alleges that NWACC, CAC, CFS, and GEC entered into a joint venture to prevent MSC from enforcing its liens. In my earlier opinion, I dismissed MSC's joint venture liability claim because MSC failed to allege "the existence of terms of an agreement to form a joint venture" and failed to allege an underlying tort committed by the joint venture. *Corporate Aviation*, 2004 U.S. Dist LEXIS, at *20. As I described above, MSC has alleged an underlying tort, intentional interference with contractual relations. Additionally, in its amended pleadings, MSC alleges that CAC, NWACC, CFS, and GEC "entered into a Master Consent Transfer, Assignment and Assumption Agreement and other related contracts." (Second Am. Countercl. at

¶ 61; Am. Third-Party Compl. at ¶ 14.) It also alleges that this agreement included all four elements of a joint venture. (Second Am. Countercl. at ¶ 60; Am. Third-Party Compl. at ¶ 13.) These allegations, if proven, along with MSC's initial allegations that GEC purchased aircraft from NWACC, leased aircraft to CAC, and purchased items from NWACC to assist in CAC's formation, permit a reasonable fact-finder to infer that NWACC, CAC, CFS, and GEC engaged in a joint venture and may be held liable for the joint venture's alleged wrongdoing. (Second Am. Countercl. at ¶ 25, 26, 34, 36, 41.)

GEC and CFS argue that these allegations alone do not state a claim because MSC failed to attach the agreement and failed to describe its contents. (Br. in Support of GEC's Mot. to Dismiss at 10.) However, because MSC has not had an opportunity to conduct discovery,[11] it may not yet have access to the specific contents of the agreement, if such an agreement exists. Moreover, "the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). "To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* Thus, I conclude that MSC has pled sufficient facts to state a claim against CAC, CFS, and GEC

[11]According to MSC, CFS and GEC have yet to respond to its discovery requests. (Br. in Supp. of GEC's Opp. to Mot. to Dismiss at 6.) GEC and CFS contend that this is irrelevant because MSC served its discovery requests after it filed its second amended counterclaim and amended third-party complaint. (Reply Br. in Supp. of GEC's Mot. to Dismiss at 4.) Nonetheless, even if MSC made its discovery requests before it filed its amended pleadings, it is highly doubtful that GEC and CFS would have responded in time for MSC to incorporate information obtained through discovery in its pleadings. At the time that MSC filed its second amended counterclaim and amended third-party complaint, discovery did not close until January 16, 2005, well after MSC's September 24, 2004 deadline to amend its counterclaim and third party-complaint.

for joint venture liability.

C. Instrumentality Liability

Under the instrumentality or alter ego doctrine,[12] courts may "pierce the corporate veil," or hold a parent corporation liable for a subsidiary's actions, "whenever one in control of a corporation uses that control, or uses the corporate assets, to further his or her own personal interests . . . ." *Ashley v. Ashley*, 393 A.2d 637, 641 (Pa. 1978). To recover under this theory, a plaintiff must allege:

> (1) That one corporation controlled another corporation to such a degree that the controlled corporation is a mere instrumentality;
> (2) That the controlling corporation is perpetrating a fraud or wrong through the controlled corporation (e.g., torts, violation of a statute, or stripping a subsidiary of its assets); and
> (3) An unjust loss or injury to the claimant, such as insolvency of a controlled corporation.

May v. Club Med Sales, Inc., 832 F. Supp. 937, 938–39 (E.D. Pa. 1993) (citation omitted).

To establish that a corporation is a "mere instrumentality" of another, the plaintiff must show "that the controlling corporation wholly ignored the separate status of the controlled corporation and so dominated and controlled its affairs that its separate existence was a mere sham." *Culbreath v. Amosa, Ltd.*, 898 F.2d 13, 14 (3d Cir. 1990). Pennsylvania courts consider the following non-exhaustive list of factors when determining whether a parent and a subsidiary are truly separate entities:

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[12]"Although the tests employed to determine when circumstances justifying 'veil-piercing' exist are variously referred to as the 'alter ego,' 'instrumentality,' or 'identity' doctrines, the formulations are generally similar, and courts rarely distinguish them." *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 485 n.2 (3d Cir. 2001) (citation omitted).

> [F]ailure to observe corporate formalities; non-payment of dividends; insolvency of [the] debtor corporation; siphoning [of] funds . . . by dominant shareholders; non-functioning of other officers and directors; absence of corporate records; whether the corporation is a mere facade for the operations of a common shareholder or shareholders; and gross undercapitalization.

Eastern Minerals & Chems. Co. v. Mahan, 225 F.3d 330, 334 n.7 (3d Cir. 2000) (citations omitted). "Piercing the corporate veil is . . . an extraordinary remedy preserved for cases involving exceptional circumstances." *Village at Camelback Prop. Owners Ass'n v. Carr*, 538 A.2d 528, 533 (Pa. Super. Ct. 1988).

MSC asserts two separate alter ego theories. First, it contends that CAC is a consolidation or continuation of NWACC and it subsidiaries and thus assumed NWACC's obligation to MSC. (Second Am. Countercl. at ¶ 74.) In my August 24 opinion, I concluded that MSC's amended counterclaim set forth sufficient facts to support an instrumentality claim against CAC for debts owed by NWACC. *Corporate Aviation*, 2004 U.S. Dist LEXIS 17154, at *23. Hence, I need not address this theory here.

In MSC's second alter ego claim, it alleges that GEC has "actual and total control" over CFS, CAC, and NWACC, and that GEC is thereby liable to MSC for wrongs committed by these companies.[13] In my earlier opinion, I dismissed MSC's instrumentality claim against GEC because MSC "failed to allege any way in which CFS is liable to it in the first place." *Corporate Aviation*, 2004 U.S. Dist LEXIS 17154, at *25. I did not consider whether MSC's allegations were sufficient to support a theory that CFS was a mere instrumentality of GEC because even if I assumed that CFS was an instrumentality of GEC, GEC could not be held liable because MSC

[13]In MSCs initial third-party complaint, it only alleged that CFS was an instrumentality of GEC. Here, it claims that CAC and NWACC are also instrumentalities of GEC.

failed to allege that CFS committed any wrongdoing. *Id*.

Here, MSC has cured the original deficiency by alleging that CFS, along with CAC and GEC, intentionally interfered with MSC's contractual relationship with NWACC. (Am. Third-Party Compl. at ¶ 25.) As I described above, the allegations in MSC's amended third-party complaint are sufficient to support a tortious interference with contract theory against CFS, CAC, and GEC.

However, MSC also contends that GEC is liable as an alter ego of NWACC. To prevail against GEC for NWACC's actions, MSC may not proceed, as it has, under an intentional interference with contractual relations theory to state an underlying claim because NWACC was party to the "Corporate Guarantees" with MSC. *See Michelson v. Exxon Research & Eng'g Co.*, 808 F.2d 1005, 1007–08 (3d Cir. 1987) ("[A] party cannot be liable for interference with a contract to which he is a party.") (applying Pennsylvania law). Thus, MSC has failed to state an instrumentality claim against GEC for NWACC's actions.[14]

Next, while MSC has stated an underlying claim against CAC and CFS, to prevail under an instrumentality theory against GEC, it must set forth sufficient facts to suggest that these corporations are mere instrumentalities of GEC. MSC makes the following general allegations in support of this theory. It asserts that GEC has "actual and total control over" CFS and CAC and that these corporations "entered into a Master Consent, Transfer, Assignment and Assumption

[14]Even if MSC had stated an underlying claim against NWACC, it has failed to allege sufficient facts to suggest that GEC is an alter ego of NWACC. MSC alleges that NWACC is insolvent and that NWACC sold a Gulf Stream American aircraft to GEC "for $1.00 and OVC." (Second Am. Countercl. at ¶ 26, 44.) These allegations alone do not suggest that GEC "so dominated and controlled [NWACC's] affairs that its separate existence was a mere sham." *Culbreath*, 898 F.2d at 14.

Agreement and other related contracts" with GEC. (Am. Third-Party Compl. at ¶ 21, 23.) These allegations alone are insufficient to state an instrumentality claim. MSC's allegation that GEC has "actual and total control over" CFS and CAC is a legal conclusion, which I need not accept as true without sufficient support. *See Schuylkill Energy Res.*, 113 F.3d at 417. Further, while MSC's claim that GEC and its alleged alter egos entered into various contracts may suggest that these companies were involved in a joint venture, it does not suggest that GEC dominated these companies in any way.

MSC also makes a series of specific allegations about the individual companies in support of its instrumentality claim. With respect to CAC, MSC asserts that CAC "was formed at the instigation of [GEC]." (Second Am. Countercl. at ¶ 37.) *See* Phillip I. Blumberg, *The Law of Corporate Groups* § 1.02, at 16 (1983) (observing that whether "[t]he parent causes the subsidiary's incorporation" is an "important factor[] to be evaluated in determining whether an entity should be disregarded."). Additionally, MSC alleges that CAC entered into lease agreements with GEC with rents that were above market rates.[15] (Second Am. Countercl. at ¶ 42.) This arguably suggests that GEC was "siphoning" CAC's funds by charging excessive rents. *See Mahan*, 225 F.3d at 334 n.7. However, MSC makes no further allegations suggesting that CAC is an instrumentality of GEC, and I will not permit MSC to proceed with its alter ego theory, which is "an extraordinary remedy," on the basis of these scant allegations. *See Village at Camelback Prop. Owners Ass'n*, 538 a.2d at 533.

In support of its claim that CFS is an instrumentality of GEC, MSC alleges that "[GEC] is

[15]The second amended counterclaim actually alleges that "CFS and/or [GEC]" entered into the lease agreements with CAC. (Second Am. Countercl. at ¶ 42.)

the manager and 100% owner of CFS." (Second Am. Countercl. at ¶ 24.) However, "the total ownership of the stock of the subsidiary by the parent will [not] per se justify a court in piercing the corporate veil . . . ." *Botwinick v. Credit Exch., Inc*., 213 A.2d 349, 353–54 (Pa. 1965). MSC also alleges that CFS and GEC "both operate from the same address" and that GEC sold an aircraft to CFS for "$1.00 and 'OVC'." (Second Am. Countercl. at ¶ 24, 32.) While these allegations suggest that the two companies had a close relationship, they are insufficient to sustain an alter ego theory. I do not believe that this is one of the "exceptional circumstances" that will justify a court to ignore the separate status of a corporation and pierce the corporate veil. *See Village at Camelback Prop. Owners Ass'n,* 538 a.2d at 533.

IV. CONCLUSION

For the reasons explained above, MSC has stated a claim against CAC, CFS, and GEC for civil conspiracy and joint venture liability. However, after two attempts, MSC still fails to state a claim against GEC for instrumentality liability. Hence, I will dismiss MSC's instrumentality claim against GEC with prejudice and I will deny the remainder of GEC and CFS's motions to dismiss. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CORPORATE AVIATION CONCEPTS, INC. and CFS AIR LLC, Plaintiffs,	:	CIVIL ACTION
v.	:	NO. 03-3020
MULTI-SERVICE AVIATION CORPORATION, Defendant and Third-Party Plaintiff,	:	
v.	:	
GENERAL ELECTRIC CAPITAL CORPORATION, Third-Party Defendant.	:	

ORDER

And now, this _____ day of March, 2005, upon consideration of General Electric Capital Corporation and CFS Air LLC's motions to dismiss Multi-Service Aviation Corporation's second amended counterclaim and amended third-party complaint (Docs. No. 42 and 43), IT IS HEREBY ORDERED as follows:

1. General Electric Capital Corporation and CFS Air LLC's motions to dismiss are GRANTED IN PART and DENIED IN PART as follows:

   a. Count III of Multi-Service Aviation Corporation's amended third-party complaint is DISMISSED with prejudice.

   b. The balance of the motions are DENIED.

2. Counsel for Multi-Service Aviation Corporation should arrange a telephonic scheduling conference with all counsel and this court during the week of March 14, 2005.

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William H. Yohn. Jr., J.